



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/643,527

08/19/2003

Scott Smith

4474

23869

7590

05/26/2009

HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

EXAMINER

BACHMAN, LINDSEY MICHELE

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

05/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/643,527

Applicant(s)

SMITH ET AL.

Examiner

LINDSEY BACHMAN

Art Unit

3734

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 16 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 16 and 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to Applicant's amendment filed 18 February 2009.

Response to Arguments

Applicant's arguments filed 18 February 2009 have been fully considered but they are not persuasive.

Applicant argues that replacing the stent (28 or 36) and outer layer (22) of Gold'125 with the tape outer layer of stent (11 surrounding 14) of Banas'684 would not result in the claimed invention because the stent of tape of Banas'684 does not put the stent in direct contact with the inner member. While this statement is correct, it would be obvious to modify the outer tubular layers (stent and outer tube) of Gold'125 into a tape/strip form that is wound around an inner tubular member as taught by Banas'684 for the purpose of being able to control the placement of the stent structure on the inner body. This modification results in Applicant's invention.

Gold'125 shows that it is not novel to place a stent structure in direct contact with an inner tubular member and cover the resulting structure with an outer tubular member. Banas'684 shows that it is not novel to attach a stent structure to an inner tubular member with a tape member for the purpose of controlling and customizing the location of the stent structure on the inner tubular member (column 10, line 56 to column 11, line 18). In light of this teaching, it would be obvious to apply the teachings of Banas'684 to the Gold'125 device.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 15, 16 and 18-23 are under 35 U.S.C. 103(a) as obvious over Golds et al. (US Patent 6,001,125) in view of Banas et al. (6,264,684).

Claim 15, 16, 18, 20: Golds'125 teaches a stent/graft that contains a continuous inner tubular body (24) and an outer layer of stent (28 or 36) in direct contact with the tubular inner body and an outer PTFE layer (22). This is shown in Figures 7 and 8. The support structure (28 or 36) is in direct contact with the inner tubular layer (see Figure 8). Golds'125 does not teach the formation of an assembly strip made of the stent and an outer PTFE layer.

Banas'684 teaches that it is known to create an assembly strip formed of a non-continuous PTFE tubular outer body (the outer portion of cladding 11) and a distensible support structure (14) that is non-continuously wound around a substantially continuous PTFE tubular inner body (12) (see Figure 1 or 4b). It would be obvious to one of ordinary skill in the art to modify the device taught by Golds'125 with an assembly strip, as taught by Banas'684 because the use of the strip allows the user to control the location of the placement of the distensible structure on the inner tubular body, allowing the user more latitude in controlling the amount of flexibility in the graft device.

Regarding Claims 21-23, Golds'125 shows that the support structure is applied to one side of the outer tubular member (see Figure 8). Further, Banas'684 also shows the

distensible support structure is applied to at least one side of the tape strip (see Figure 2, for example).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **LINDSEY BACHMAN** whose telephone number is (571)272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. B./
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734